

ALBERT M. LIPSCOMB

IBLA 86-609

Decided October 15, 1987

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting a protest against disposition of funds held in an escrow account: ES 32203.

Affirmed.

1. Color or Claim of Title: Generally -- Color or Claim of Title:
Applications -- Color or Claim of Title: Appraised Value

Although equitable title to land claimed under a class I color-of-title application filed pursuant to 43 U.S.C. § 1068 (1982) vests upon compliance with the statutory requirements coupled with the filing of an application with BLM, this does not establish a right in the applicant to the proceeds accruing from oil and gas development subsequent to the application and prior to issuance of patent.

APPEARANCES: Allan R. Chason, Esq., Bay Minette, Alabama, for appellant; Kenneth G. Lee, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management; Jack M. Wilhelm, Esq., New Orleans, Louisiana, and Craig Hall, Esq., Washington, D.C., for Amoco Production Company, intervenor.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Albert M. Lipscomb has appealed from a February 24, 1986 decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting appellant's protest concerning the disposition of certain funds being held in an interest-earning escrow account. The funds represent the proceeds of oil and gas development attributable to a tract of public land for which appellant had filed a color-of-title application.

On October 27, 1982, appellant filed with BLM an application under the Color of Title Act, as amended, 43 U.S.C. § 1068 (1982), for the SW 1/4 SE 1/4 sec. 7, T. 8 S., R. 3 E., Saint Stephens Meridian, Baldwin County, Alabama, containing approximately 40 acres.

Soon after appellant filed his application, Amoco Production Company (Amoco), which held an oil and gas lease for adjacent private lands and

desired to drill a well on the private tract, entered into Communitization Agreement 1/ E-91 with the United States concerning development of the leased land and the adjoining Federal tract. Section 3 of this agreement required Amoco to place all proceeds attributable to production from the unleased Federal tract in an escrow account. During the time that appellant's application was being processed, substantial proceeds attributable to the subject parcel were placed in the escrow account. 2/

On July 26, 1985, BLM issued a decision allowing appellant's color-of-title application and according him a preference right to purchase the 40-acre parcel. Thereafter, by letters dated August 29 and September 3, 1985, BLM notified both appellant and Amoco that, at the time of conveyance of patent to the lands to appellant, all proceeds deposited in the escrow account would be payable to the United States. As grounds therefor, BLM asserted the filing of the color-of-title application was an acknowledgement of United States ownership and proceeds of mineral development accrue to the owner.

Counsel for appellant appealed the claim of BLM to the escrowed funds to this Board. By order dated December 20, 1985, the Board remanded the case to BLM with instructions to adjudicate appellant's claim to the escrowed funds as a protest and to issue patent. Patent was issued on January 8, 1986, and appellant's claim to the escrow fund was rejected in the February 24, 1986, decision from which this appeal is taken.

We begin our discussion of this case by noting that no issue has been raised regarding appellant's qualification for the patent issued. BLM found appellant to be a qualified applicant who had met the requirements of the Color of Title Act. BLM further found that appellant was entitled under 43 U.S.C. § 1068b (1982), to receive his patent without a reservation to the United States of the mineral estate. 3/ The February 24, 1986, BLM decision

1/ A communitization or pooling agreement brings together separately owned interests in small tracts for the purpose of obtaining a well permit under applicable spacing rules. H. Williams and C. Meyers, Oil and Gas Terms 554-555 (5th ed. 1981) (Definitions of "pooling" and "pooling agreement.") 2/ BLM stated in a Sept. 3, 1985, letter to Amoco (a copy of which was sent to counsel for appellant) that according to BLM's figures the proportionate share of the gross revenue attributable to this parcel was \$302,552.23, and the proportionate share of offsetting attributable costs was \$69,571.26. The letter requested confirmation of the figures. In a letter dated Feb. 6, 1986, BLM informed Amoco that revenues from the Lipscomb 7-9 Wells should cease to accrue in the escrow account as of the date of issuance of patent to appellant, Jan. 8, 1986.

3/ 43 U.S.C. § 1068b (1982) provides:

"If the claimant requests that the patent to be issued under this chapter not contain a mineral reservation and if he can establish to the satisfaction of the Secretary that the requirements of this chapter have been complied with by such claimant and his predecessors for the period commencing not later than January 1, 1901, to the date of application, no

rejected appellant's arguments that he was entitled to the proceeds placed in escrow pursuant to the communitization agreement, and found that the United States was entitled to those funds.

In his statement of reasons for appeal, appellant argues that as of the date of filing his color-of-title application, he "had a vested right to the issuance of a patent and was the equitable owner of the surface and minerals of the subject property, including the royalties accruing from production subsequent to the date of the application." While appellant has cited no authority in support of this contention, it appears that appellant considers the filing of the color-of-title application to be the final requirement necessary to vest full equitable title in a parcel where the applicant is found qualified to receive the land under the Color of Title Act.

In considering appellant's claim that his title vested at the time he filed his application, we first consider the nature of the rights granted by the Color of Title Act. Preliminarily, we note that, except as provided in the Act, there is no right of adverse possession against the Federal Government. "It has long been recognized that possession of Federal land for the period of a state's statute of limitations, which could give rise to title rights in an adverse possessor of non-Federal land, cannot affect the title of the United States. E.g., United States v. California, 332 U.S. 19 (1947); United States v. Gossett, 416 F.2d 565 (9th Cir. 1969)." Manley Rustin, 28 IBLA 205, 208, 83 I.D. 617, 618 (1976).

To alleviate the hardship occasioned where individuals had occupied in good faith and under color-of-title lands to which title had remained in the United States, Congress passed the Color of Title Act in 1928 and subsequently amended it in 1953. The Act permits claimants to purchase, at not less than \$1.25 per acre, up to 160 acres of land from the Government if they were unaware that patent to the land had never issued, assuming certain conditions are met. Congress has established two methods by which a claimant can obtain title, as set forth in 43 U.S.C. § 1068 (1982):

The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, or (b) may, in his discretion, whenever

fn. 3 (continued)

mineral reservation shall be made unless the lands are, at the time of issuance of the patent, within a mineral withdrawal or subject to an outstanding mineral lease."

Implicit in BLM's finding was the fact that appellant and his predecessors in interest complied with the Color of Title Act requirement for the period commencing not later than January 1, 1901, to the date of application.

it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application during which time they have paid taxes levied on the land by State and local governmental units, issue a patent for not to exceed one hundred and sixty acres of such land upon the payment of not less than \$1.25 per acre * * *.

The method for obtaining title outlined in subsection (a) of 43 U.S.C. § 1068 is known as a class I claim, and the method described in subsection (b), a class II claim. 4/

As a preliminary matter, we note that appellant's color-of-title application was initially filed as a class II application. Subsequently, by letter dated January 27, 1984, from counsel for appellant to BLM, amendment of the application to include a class I color-of-title claim was requested. Appellant's application was approved as a class I claim in the July 26, 1985, BLM decision referred to previously.

As originally enacted, the Color of Title Act recognized only class I claims and provided that the Secretary, upon a satisfactory showing that all of the conditions had been met, had the discretion, but was not obligated, to issue patent. In 1953 Congress amended the Color of Title Act to read as it now does. The amendment made the issuance of patent mandatory when the conditions for a class I claim have been met. As explained in the Senate Report accompanying the amendment:

Existing law permits the Secretary of the Interior to issue a patent at his discretion for not more than 160 acres of public land, upon payment of not less than \$1.25 per acre, if he is satisfied that the land has been held in good faith and in peaceful, adverse possession by the claimant, his ancestors, or grantors, under claim or color of title for more than 20 years, and that valuable improvements have been placed on the land or some part thereof has been reduced to cultivation. This bill would make mandatory the issuance

4/ These classifications are found at 43 CFR 2540.0-5(b), which states in pertinent part:

"(b) The claims recognized by the [Color of Title] Act will be referred to in this part as claims of class 1, and claim[s] of class 2. A claim of class 1 is one which has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. A claim of class 2 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by State and local governmental units."

of patents in such cases and create a vested right in the land on the part of a settler with a genuine color-of-title claim which meets the requirements.

S. Rep. No. 588, 83rd Cong., 1st Sess. 2, 3, reprinted in 1953 U.S. Code Cong. & Admin. News 2014, 2015.

Thus, the issue raised by this appeal is whether the vested right of a color-of-title applicant to patent can give rise to a claim to the proceeds of mineral development occurring prior to issuance of patent which does not contain a mineral reservation. 5/ In the context of this case, a potential subsidiary issue is when rights vest under a class I claim where the application is initially filed as a class II claim and subsequently amended to include a class I claim. 6/

With respect to when and to what extent the right vests, the statute is silent and the legislative history offers little guidance except to say a vested right is created in a class I claim "which meets the requirements."

[1] The Board has considered the nature of the vested right created in a class I color-of-title claimant in the context of reviewing the applicant's obligation to pay the appraised value 7/ of a tract he qualified to purchase under the Color of Title Act in Benton C. Cavin, 83 IBLA 107 (1984). In that case the appellant argued that he had been vested with full equitable title upon the passage of the 1953 Act amending the Color of Title Act "such that no appreciation in value since [the date of passage of the 1953 Act] can be considered * * *." 83 IBLA at 127. The Board disagreed, stating: "Contrary to appellant's assertion, no vested rights were acquired merely by the passage of the Act. Such rights as were granted were capable of vesting only upon application by a qualified claimant." Id.

In Cavin the Board established that before any rights could vest, the occupant of Federally owned land had to file an application under the Color of Title Act:

5/ We note that issuance of patent without a mineral reservation is the exception rather than the rule. The terms of 43 U.S.C. § 1068 provide for the reservation of "coal and all other minerals" to the United States, whereas the terms of 43 U.S.C. § 1068b authorize issuance of patent without a mineral reservation under certain circumstances where the requirements of the Act have been complied with by claimant and his predecessors in interest from Jan. 1, 1901, to the date of the application.

6/ In view of the discretion conferred by the Act on the Secretary with regard to approval of class II color-of-title claims, we decline to find that a claim of this type gives rise to any type of vested right at the time of filing the application.

7/ Under the terms of the Color of Title Act, applicants are required to pay the appraised value of the land, excluding any aspects of value resulting from improvement of the land by the applicant or his predecessors, subject to consideration of the equities of the applicant. 43 U.S.C. § 1068a (1982); see 43 CFR 2541.4(a).

If an individual had improved the land held under color of title for more than 20 years, upon notification that the land was Federally owned, he had an inchoate right to apply for a patent under the Color of Title Act. If the individual applied under the Act, his inchoate right would vest, such that a subsequent purchaser could succeed to his right to have the application processed. [8/]

Id. After establishing that filing was indeed necessary to acquire vested rights under the color of Title Act, the Board then directly addressed the extent of this vested right:

Finally, even though we agree that equitable title did vest in appellant * * *, upon the filing of his color-of-title application, this does not mean that he became vested with an equitable right to all appreciation in value occurring after that date. In A. F. Dantzler, A-31038 (May 12, 1970), the Assistant Secretary rejected an argument that the land should be appraised as of the date of the application by advertent to section 2 of the Act, 43 U.S.C. § 1068a (1982), which expressly provides that the appraisal shall be "on the basis of the value of such lands at the date of appraisal." Appellant's contention herein is merely a variant of the argument rejected in Dantzler.

Appellant contends, in effect, that Congress intended that the Department appraise the land as of the date of appraisal, and then adjust that value downward for any increase in value occurring subsequent to the filing of the application. But, if Congress had intended all appreciation in value from the date of application to be considered an element of an applicant's equity, Congress certainly would merely have directed that the appraisal be based on the value of the land at the time of application. This, Congress did not do, and appellant's attempt to reach the same result rejected in Dantzler through a considerably more convoluted process must be rejected. [Emphasis added.]

83 IBLA 127-28.

8/ The Board in Cavin compared the equitable title obtained under the Color of Title Act to that acquired by Alaska Natives under the Native Allotment Act, stating:

"[G]ood faith occupants of Federal land under color of title are akin to Native occupants whose use and occupancy of Federal land, consistent with the Native Allotment Act, gave rise to an inchoate preference right to an allotment. This right, however, would only vest upon the filing of an application under the Native Allotment Act. See United States v. Flynn, 53 IBLA 208, 88 I.D. 373 (1981)."

83 IBLA at 127, n.28.

We find the holding in Cavin applicable to the present case. Here, appellant suggests that, as of the date of filing, he was the "equitable owner of the surface and minerals of the subject property * * *." However, as explained in Cavin, while filing coupled with compliance with the statutory requirements established appellant's vested right to receive legal title to the parcel he applied for, Congress chose not to permit valuation of the lands as of the date of filing. Although equities are clearly to be considered in the appraisal process, the Act requires that the applicant pay an appraised fair market value as of the date of appraisal.

Accordingly, although appellant's rights to the land vested upon compliance with the statutory requirements coupled with the filing of an application under the Color of Title Act, this did not entitle him to all appreciation in the value of the land which occurred prior to patent or to the benefit of mineral exploitation of the land prior to patent.

The requirement to pay the appraised fair market value also has a bearing on the outcome of this case from another perspective. The appraised value, after adjustment for improvements to the land made by the applicant and for other equities in appellant's favor, represents the value of the interest that remains in the United States. By specifically making payment of the appraised value a requirement for obtaining patent, Congress ensured that the United States would be compensated for the interest it continued to hold. The record discloses that the appraisal of appellant's tract of land included a specified amount for the mineral value of the land including oil and gas reserves and sand and gravel. See Memorandum from Chief Review Appraiser To File, dated July 22, 1985. The file also contains a memorandum dated July 11, 1985, from the Deputy State Director, Mineral Resources, to the Deputy State Director, Lands and Renewable Resources, revealing the reappraisal of the mineral values to reflect the value of remaining oil and gas reserves. If appellant was entitled to the proceeds of oil and gas development occurring between the time the application was filed and the time of patenting on the theory he was entitled to the minerals in the land, then the appraisal would have to be revised to include this amount to comply with the statutory requirement to pay the appraised value. Indeed, the legislative history of the Act of July 28, 1953, ch. 254, § 2 amending the Color of Title Act to add sec. 3, 43 U.S.C. § 1068b (1982), providing for patent without mineral reservation in certain circumstances, confirms the obligation of the claimant taking mineral title to pay the appraised value of the land including the minerals. In a letter to the Chairman of the Committee on Interior and Insular Affairs discussing the purpose of the amendment, Assistant Secretary of the Interior Lewis explained:

In cases coming within the terms of the new section 3 the claimant would have the option to take either a patent with a mineral reservation or a patent without a mineral reservation. Where he elected to take the latter, the value of the mineral resources of land would, of course, be reflected in the price to be paid for the land, as determined by appraisal under section 2 of the present law.

S. Rep. No. 588, 83rd Cong., 1st Sess., reprinted in 1953 U.S. Code Cong. & Ad. News 2014, 2016. Accordingly, we find that appellant's vested right to a class I claim did not embrace the proceeds of development of the minerals prior to patent.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of BLM is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Bruce R. Harris
Administrative Judge

